IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

FRIDAY, THE 30TH MARCH 2007 / 9TH CHAITHRA 1929

WP(C).No. 10012 of 2007(P)

PETITIONER:

MOHAMMED NOOHU NAZEER, AGED 48 YEARS,
S/O.MOHAMMED NOOHU, RESIDING AT "SHIBIN COTTAGE",
CHATHAMPARA, ALAMCODE, ATTINGAL,
THIRUVANANTHAPURAM.

BY ADV. SRI.P.GOPAKUMARAN NAIR
SRI.C.S.DIAS
SRI.AJITH MURALI

RESPONDENTS:

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1. CORPORATION OF THIRUVANANTHAPURAM,
REPRESENTED BY THE SECRETARY, CORPORATION OFFICE,
THIRUVANANTHAPURAM.

2. CHIEF TOWN PLANNER,
TOWN PLANNING OFFICE, KOTTARATHIL BUILDING,
PALAYAM, THIRUVANANTHAPURAM.

3. THE SPECIAL SECRETARY, LOCAL
ADMINISTRATION AND SOCIAL WELFARE (G) DEPARTMENT,
GOVT. OF KERALA, THIRUVANANTHAPURAM.

4. STATE OF KERALA,
REPRESENTED BY THE CHIEF SECRETARY,
SECRETARIAT, THIRUVANANTHAPURAM.

R1 BY ADV. SRI. N. NANDAKUMARA MENON, SC.
R2 TO R4 BY ADV. SRI. K.J. MOHAMMED ANSAR, GOVT. PLEADER.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 30/03/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

PIUS C. KURIAKOSE, J.

W.P.(C) No. 10012 OF 2007

Dated this the 30th day of March, 2007

JUDGMENT

Heard Sri.P.Gopakumaran Nair, counsel for the petitioner, Sri. N.Nandakumara Menon, Standing Counsel for the Corporation and Sri.K.J.Mohammed Ansar, learned Government Pleader for respondents 2 to 4.

2. Mr.Ansar would submit that the area upon which the petitioner seeks permission for construction falls within the Medical College Area Development area coming within the DTP Scheme. He also submits that, that was why Ext.P3 order was issued by the Chief Town Planner.

3. Sri. N.Nandakumara Menon submits that in so long as Ext.P3 stands, it will be difficult for the Corporation to issue building permit to the petitioner. Sri. Gopakumaran Nair submits that the issue is covered by judgment of this Court in **Padmini V. State of Kerala** [1999 (3) KLT 465] and also the judgment of Supreme Court in **Raju Jethmalani & others V. State of Maharashtra & others**[(2005) 11 SCC 222]. Learned counsel invited my attention to the judgment in WP(C) No.6790 of 2007, which the learned counsel submitted was passed in respect of a property situated very near to the petitioner's property within the area

of Medical College Development Area itself.

Considering the principles laid down by this Court in **Padmini's** Case(Supra) and by the Supreme Court in **Jethmalani's** case(Supra), I am of the view that the petitioner is entitled for relief subject to certain conditions. Ext.P3 is quashed and the Corporation is directed to pass orders on the building permit applications submitted by the petitioner ignoring Ext.P3 favourably if the plan is otherwise in order on condition that the petitioner submits an undertaking in the form of an affidavit stating clearly that if an acquisition under Section 4(1) of the Land Acquisition Act is promulgated within a period of one year from the issuance of the building permit to the extent the same relates to the permit for construction over the portion of the property purchased. Subsequently by the petitioner(having an extent of 16.5 cents) the petitioner will surrender the property without claiming any compensation for the building. It is made clear that even thereafter the Corporation or the Government wants to acquire the property of the petitioner, this judgment will not stand in the way of doing so and under such an event the respondents will give adequate compensation to the petitioner. Fresh orders on the building permit application will be passed by the 2nd respondent-Corporation at their earliest and at any rate within three

weeks of the petitioner filing the affidavit along with a copy of this judgment

PIUS C. KURIAKOSE, JUDGE

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